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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE
(PPA) PRODUCTS LIABILITY
LITIGATION,

MDL NO. 1407

This document relates to all
actions

ORDER RE: DAUBERT TESTIMONY
ON ISCHEMIC STROKE AND
CARDIAC INJURIES

The court held a telephone conference with counsel on April 18, 2003 concerning expert testimony on ischemic stroke and cardiac injuries at the upcoming Daubert hearing. Plaintiffs requested that they be allowed to substitute Dr. Steven R. Levine for Dr. Alan Woolf on the issue of ischemic stroke. Dr. Levine is the primary ischemic stroke expert for plaintiffs in state cases pending in Washington, Oregon, Pennsylvania, and New Jersey, but was not identified by the Plaintiffs' Steering Committee as an MDL witness. Plaintiffs requested that Dr. Levine be allowed to testify in order to accommodate limitations in Dr. Woolf's schedule and to further the goal of federal-state coordination.

Defendants objected to the last minute substitution of an expert never identified by the PSC. They noted that Dr. Levine has not been deposed in the MDL and that defendants' experts have

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1 not been prepared with respect to his opinions. Defendants also
2 requested that the court defer the Daubert hearing as it relates
3 to cardiac injuries, given the recent substitution of a different
4 expert witness on this topic. See Order Den. Mot. for Contin. of
5 Daubert Hr'g on Cardiac Injury Issues but Gr. Pls. Leave to
6 Submit New Expert Report and Test. (Apr. 16, 2003).

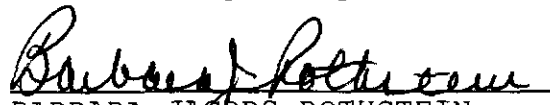
7 The court granted defendants' request for a deferral on the
8 cardiac issue. Plaintiffs previously requested such a deferral
9 and the late substitution of a new witness not yet deposed in
10 either the MDL or any state case allowed defendants little time
11 to prepare. The court directed the parties to meet and confer
12 regarding a date, preferably in late May 2003, to schedule a one-
13 day Daubert hearing on cardiac injuries.

14 The court also granted plaintiffs' request to substitute Dr.
15 Levine on the issue of ischemic stroke at the Daubert hearing.
16 Given Dr. Levine's prominent role in the state litigation, his
17 participation in the hearing will greatly assist in this court's
18 goal of federal-state coordination. Although not deposed in the
19 MDL, Dr. Levine has been deposed on three occasions, in New
20 Jersey, Pennsylvania, and Washington cases. In at least two of
21 those depositions, defendants were represented by the same law
22 firms representing defendants in the MDL. Also, defendants'
23 identified expert on ischemic stroke, Dr. Gregory W. Albers,
24 reviewed Dr. Levine's expert report prior to preparing his own
25 report.

26 In response to the court's ruling allowing the substitution

1 of Dr. Levine, defendants requested that the court defer the
2 Daubert hearing on ischemic stroke. The court declined this
3 request in light of fast approaching state court trials involving
4 ischemic stroke injuries and the goal of federal-state coordina-
5 tion. However, recognizing the difficulty defendants face in
6 preparing for Dr. Levine on such short notice, the court indi-
7 cated it would allow supplemental cross examination at a later
8 date in the event defendants found themselves unprepared in
9 response to Dr. Levine's testimony.

10 DATED at Seattle, Washington this 24th day of April, 2003.

11 
12 BARBARA JACOBS ROTHSTEIN
13 UNITED STATES DISTRICT JUDGE
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